

STATE OF INDIANA)
) SS:
COUNTY OF ST. JOSEPH)

IN THE ST. JOSEPH CIRCUIT COURT
CAUSE NO.71C01-0312-PL-572

STATE OF INDIANA,)

Plaintiff,)

v.)

LAKESIDE BUILDERS, LLC)
JASON MIDDLEBORN)
and PAT "PATCHES" MIDDLEBORN)

Defendants.)

- FILED -
DEC 6 - 2004
Clerk
St. Joseph Circuit Court

MOTION FOR LEAVE TO AMEND COMPLAINT

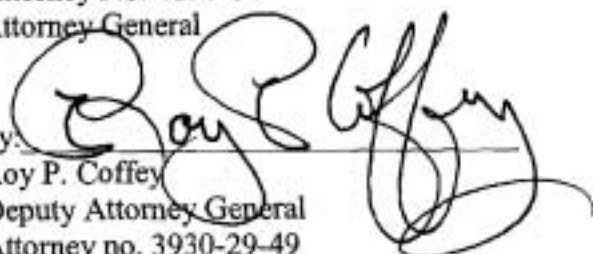
The State of Indiana, by Attorney General Steve Carter and Deputy Attorney Roy P. Coffey, in accordance with Rule 15 of the Indiana Trial Rules of Civil Procedure and requests the Court grant leave to amend its Complaint and in support states:

1. On December 17, 2003 the Plaintiff initiated this action by filing of a Complaint for Injunction, Restitution, Costs, and Civil Penalties against the Defendants.
2. On March 30, 2004 the Defendant filed its Answer to Plaintiff's.
3. Plaintiff seeks leave to amend its complaint to correct a scribal error in rhetorical paragraph number 41.
4. If granted, Plaintiffs amended complaint will read as follows:
 41. By representing a home improvement could be completed at a stated price and within a reasonable time, when Defendants knew, or should have know it could not, they violated Ind. Code §24-5-0.5-3(a)(1) and (10).
5. Defendants will not be prejudiced by the amendment.

6. An Amended Complaint for Injunction, Restitution, Costs and Civil Penalties is submitted with this motion as Exhibit A.

Wherefore, the Plaintiff, the State of Indiana, requests the Court to grant leave to amend its complaint as shown in Exhibit 'A', and for all other just and proper relief.

Respectfully submitted,
STEVE CARTER
Attorney No. 4150-64
Attorney General

by: 
Roy P. Coffey
Deputy Attorney General
Attorney no. 3930-29-49


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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the above Notice of Amended Complaint and Amended Complaint was mailed by United States Mail, first class postage prepaid, to the following on this 2nd day of ~~November~~, 2004;

December

William E. Dittrich
Attorney at Law
Thomas L. Kirsch & Associates
131 Ridge Road
Munster, IN 46321


Roy P. Coffey

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302 West Washington Street
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IN THE ST. JOSEPH CIRCUIT COURT
CAUSE NO. 71C01-0312-PL-572

STATE OF INDIANA,
Plaintiff,
v.
LAKESIDE BUILDERS, LLC,
JASON MIDDLEBORN
and PAT "PATCHES" MIDDLEBORN
Defendants

**AMENDED COMPLAINT FOR INJUNCTION, RESTITUTION, COSTS
AND CIVIL PENALTIES**

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Roy Coffey, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1 *et seq.*, the Indiana Home Improvement Contracts Act, Ind. Code § 24-5-11-1 *et seq.*, the Indiana Credit Services Organizations Act, Ind. Code § 24-5-15-1 *et seq.*, and the Indiana Home Solicitation Sales Act, Ind. Code § 24-5-10-1 *et seq.*, for injunctive relief, costs, and other relief.

PARTIES

1. The Plaintiff, State of Indiana is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-5-0.5-4(c) and Ind. Code 24-5-11-14.



2. Defendant Lakeside Builders, LLC (Lakeside) is a domestic limited liability company, with a principal place of business at 1915 S. Heaton Street, Knox, Indiana 46534 who at all relevant times engaged in business as a home improvement contractor and acted as a credit services organization.

3. Defendant Jason Middleborn (Jason Middleborn) is an individual, who at all times relevant to this complaint engaged in business as a home improvement contractor and acted as a credit services organization.

4. Defendant Pat Middleborn (Pat Middleborn) is an individual, who at all times relevant to this complaint engaged in business as a home improvement contractor and acted as a credit services organization

FACTS

5. On May 22, 2001, the State of Indiana obtained a judgment in Lake Circuit Court against Pat Middleborn for violations of Indiana's Deceptive Consumer Sales Act, Ind. Code §24-5-0.5-1 *et seq.* and Home Improvement Contracts Act, Ind. Code §24-5-11-1 *et seq.* A copy of the judgment is attached hereto and incorporated by reference as Exhibit "A."

6. At all times relevant to this complaint Jason Middleborn and Pat Middleborn acted as the alter ego of Lakeside Builders, LLC; conducting, managing, and controlling the affairs of the Defendant limited liability company as if it were their own business, and using the LLC to defraud consumers as set forth below.

7. Since at least May 1, 2002, Defendants, individually or collectively, have entered into home improvement contracts with Indiana consumers.

8. On June 5, 2002, Lakeside entered into a contract with Douglas and Noreen Hicks (Hicks) of South Bend, Indiana, in Hicks' home, wherein Defendants agreed to perform extensive home improvements to Hicks' home for a price of Forty Nine Thousand Four Hundred Eighty Two and 00/100 Dollars (\$49,482.00). A true and correct copy of Defendant's contract with Lakeside is attached and incorporated by reference as Exhibit "B"

9. As a part of the contract with Hicks', Defendants advised and/or assisted Hicks' in obtaining an extension of credit from 1st Trust Mortgage arranged through Brian Middleborn, a loan originator for 1st Trust Mortgage.

10. Defendants also advised or assisted other consumers in obtaining extensions of credit, including: Maximino and Judith Colon of Lake Station, Indiana on May 1, 2002, Betty Hogue of South Bend, Indiana on August 8, 2002 and Lugayila Lukuba of South Bend, Indiana on January 8, 2002.

11. Defendants assisted the above named consumers in obtaining an extension credit without having obtained a ten thousand dollar (\$10,000) bond or irrevocable letter of credit made in favor of the State of Indiana.

12. Defendants did not provide the above named consumers with a written statement, as required by Ind. Code § 24-5-15-6, prior to (or in connection with) assisting these consumers in obtaining extensions of credit.

13. Defendants did not provide the above named consumers with a written contract for credit services as required by Ind. Code §24-5-15-7(a).

14. Defendants did not provide the above named consumers with notices of cancellation as required by Ind. Code §24-5-15-7(a) and Ind. Code §24-5-10-9.

15. After Hicks' loan was approved, Defendants requested Hicks' pay the entire amount of the home improvement to Defendants.

16. Hicks', over protest, paid the full contract amount of Forty Nine Thousand Four Hundred and Eighty Two and 00/100 Dollars (\$49,482.00) to Defendants.

17. Defendant performed some work pursuant to the contract terms.

18. On or about November 15, 2002 Defendant stopped work on Hicks' home improvement.

19. Defendant promised on several occasions to complete work on Hicks' home improvement.

20. Hicks made numerous requests to for Defendant to complete the home improvements.

21. Defendant refused to resume work on the Hicks' home improvement and therefore did not complete Hicks home improvement.

22. Defendant failed to include the following information in the contract with Hicks':

- a. A reasonably detailed description of the proposed home improvements.
- b. A statement that specifications will be provided before the commencement of any work and that the home improvement is subject to the consumer's separate written and dated approval.
- c. The approximate starting and completion dates of the home improvements.

d. A statement of any contingencies that would materially change the approximate completion date.

23. Defendant did not provide a completed home improvement contract to the consumer before the consumer signed it.

**COUNT I - VIOLATIONS OF THE HOME IMPROVEMENT
CONTRACTS ACT**

24. The services described in paragraph 8 are "home improvements" as defined by Ind. Code § 24-5-11-3.

25. The transaction referred to in paragraph 8 above is a "home improvement contract" as defined by Ind. Code § 24-5-11-4.

26. Defendants are "suppliers" as defined by Ind. Code § 24-5-0.5-2(a)(3).

27. By failing to provide Hicks with a completed home improvement contract containing the information referred to in paragraph 22 above, Defendants violated the Home Improvement Contracts Act, Ind. Code § 24-5-11-10.

28. Defendants' violations of the Indiana Home Improvement Contracts Act referred to in paragraph 22 constitute deceptive acts and subject Defendants to the remedies and penalties under Ind. Code § 24-5-0.5.

COUNT II-VIOLATIONS OF THE CREDIT SERVICES ORGANIZATION ACT

29. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 28 above.

30. The services Defendants provided in paragraphs 9 and 10 above are those of a "credit services organization" as defined by Ind. Code §24-5-15-2.

31. By failing to obtain a bond Defendants violated the Credit Services Act, Ind. Code § 24-5-15-8.

32. By failing to provide consumers with a written contract and notice of cancellation for a credit services agreement, Defendants violated the Credit Services Organization Act, Ind. Code §24-5-15-7.

33. By failing to provide a written statement of credit services to be provided, Defendants violated the Credit Services Organizations Act, Ind. Code §24-5-15-6.

COUNT III-VIOLATIONS OF THE HOME SOLICITATION SALES ACT

34. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 33 above.

35. The transaction Defendants engaged in paragraph 8 above was a "home consumer transaction."

36. By failing to provide consumers with a required notice of cancellation of a home solicitation sale, Defendants violated the Home Solicitation Sales Act, §24-5-10-9

COUNT IV – VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

37. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 36 above.

38. The transaction referred to in paragraph 8 above is a "consumer transaction" as defined by Ind. Code §24-5-0.5-2(a)(1).

39. Defendants are "suppliers" as defined by Ind. Code §24-5-0.5-2(a)(3).

40. The deceptive acts complained of herein will continue unless Defendants are enjoined

41. By representing a home improvement could be completed at a stated price and within a reasonable time, when Defendants knew, or should have know it could not, they violated Ind. Code §24-5-0.5-3(a)(1) and (10).

**COUNT V – KNOWING AND INTENTIONAL VIOLATIONS OF
THE DECEPTIVE CONSUMER SALES ACT**

42. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 though 41 above.

43. The misrepresentations and deceptive acts set forth in paragraphs 11, 12, 13, 14, 18 and 22, 31, 32, 33 and 36 were committed by Defendants with knowledge and intent to deceive.

RELIEF

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against Defendants, Jason Middleborn, Pat Middleborn and Lakeside Builders, LLC, enjoining Defendants from the following:

a. in the course of entering into home improvement transactions, failing to provide to the consumer a written, completed home improvement contract which includes at a minimum the following:

(1) The name of the consumer and the address of the residential property that is the subject of the home improvement;

(2) The name and address of the home improvement supplier and each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;

(3) The date the home improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the home improvement contract;

(4) A reasonably detailed description of the proposed home improvements;

(5) If the description required by Ind. Code §24-5-11-10(a)(4) does not include the specifications for the home improvement, a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;

(6) The approximate starting and completion date of the home improvements;

(7) A statement of any contingencies that would materially change the approximate completion date;

(8) The home improvement contract price; and

(9) Signature lines for the home improvement supplier or the supplier's agent and for each consumer who is to be a party to the home improvement contract with a legible printed or typed version of that person's name placed directly after or below the signature;

b. in the course of entering into home improvement transactions, failing to agree unequivocally by written signature to all of the terms of a home improvement contract before the consumer signs the home improvement contract and before the consumer can be required to make any down payment;

c. in the course of entering into home improvement transactions, failing to provide a completed home improvement contract to the consumer before it is signed by the consumer; and

d. in the course of entering into home consumer transactions, failing to provide consumers with all notices of cancellation required by law.

e. in the course of acting as a credit services organization, failing to post the required bond/irrevocable letter of credit or failing to provide consumers with written statements, contracts and notices required by law.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against Defendants Jason Middleborn, Pat Middleborn and Lakeside Builders, LLC for the following relief:

a. costs pursuant to Ind. Code §24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;

b. consumer restitution in the amount of Forty Nine Thousand Four Hundred Eighty Two and 00/100 Dollars (\$49,482.00) to Douglas Hicks.

c. on Count V of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code §24-5-0.5-4(g) for Defendants knowing violations of the Deceptive Consumer

Sales Act, in the amount of five hundred and 00/100 dollars (\$500.00) per violation,
payable to the State of Indiana;

e. on Count V of the Plaintiff's Complaint, civil penalties pursuant to Ind.
Code §24-5-0.5-8 for Defendants' intentional violations of the Deceptive Consumer Sales
Act, in the amount of five hundred and 00/100 dollars (\$500.00) per violation payable to
the State of Indiana;

f. all other just and proper relief.

Respectfully submitted,

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Attorney General of Indiana
Atty. No. 4150-64

By. 

Roy P. Coffey
Deputy Attorney General
Atty. No. 3930-29

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